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10/076,552	02/19/2002	Joshua Charles Harrison		1793

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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/076,552

Applicant(s)

HARRISON, JOSHUA CHARLES

Examiner

Christopher Bottorff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) 2-4 and 20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-26 is/are allowed.
- 6) ☒ Claim(s) 1 and 6-9 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The amendment filed February 26, 2004 has been entered. Claims 10-19 are canceled. Claims 20-26 are added. Claims 1-9 and 20-26 are pending. Claims 2-4 and 20 are withdrawn from consideration as being directed toward a non-elected invention. Claims 1, 5-9, and 21-26 are under consideration.

### ***Claim Objections***

Claims 5 and 21 are objected to because of the following informalities: claims 5 and 21 are identical and one of the claims must be canceled in the event that they are both allowable. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schnitzhofer US 6,209,904 in view of Balmain US 5,782,475.

Schnitzhofer discloses a safety device on snowboarding equipment. The safety device comprises two binding support platforms 2a, 2b, 22 and a platform retention assembly 1a, 1b, 3a, 3b, 4, 12, 13a, 13b fastened to the snowboard, wherein a binding is fastened to each binding support platform respectively. See Figure 3. The platform

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retention assembly includes a plurality of preloaded compliant members 3a, 3b that form interfaces 22 with contours along the edges of the binding support platforms. See Figures 4 and 5. The platform retention assembly further includes a plurality of firm features 12 that contact firm mating features of the binding support platforms defined by the outer edges of the binding support platforms. See Figure 3. The firm features and firm mating features are arranged such that the contacts between them that limit relative in-plane translation, when projected onto the plane of the snowboard, are all tangent about one mutual center point.

The platform retention assembly includes two distinct underlying plate pieces 1a, 1b that are each fastened to the snowboard. The firm features of the platform retention assembly are firm features of one or more of the plates that are components of the platform retention assembly. At least three preloaded compliant members are provided. Also, the contours include facets formed by a beveled surface along the lower edge of the contour that facilitate forcible reattachment of the binding support platforms onto the platform retention assembly. See Figure 7.

Schnitzhofer does not disclose one binding support platform to which both bindings are fastened. However, Balmain teaches that the practice of providing a binding support platform as one platform 100 to which two bindings are fastened was old and well known in the art at the time the invention was made. See column 4, lines 14-18, and Figure 1. From the teachings of Balmain, providing the two linked platforms of Schnitzhofer as one platform to which two bindings are fastened would have been obvious to one of ordinary skill in the art at the time the invention was made. This would

allow the entire binding support platform to be attached to the platform retention assembly in one step, rather than having to manipulate two separate platforms.

Note that claiming the structure of the firm features with greater specificity would be favorably considered.

### ***Allowable Subject Matter***

Claims 21-26 are allowed. In the event that claim 21 is canceled, claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 21 and 5 each define the location of the preload compliant members as being closer to the leading and trailing edges of the snowboard than the bindings. This feature, in combination with the further limitations of the claims, distinguishes the claimed invention over the prior art.

### ***Response to Arguments***

Applicant's arguments filed February 26, 2004 have been fully considered but they are not persuasive.

In regard to claims 2-4, Applicant's understanding that these claims are allowable but for the rejection of claim 1 is not accurate. Claims 2-4 have not yet been considered on the merits and their independent allowability has not been determined. Thus, they are not allowable in their own right. However, if independent claim 1 is allowed due to a future amendment and remains generic to the species of claims 2-4, then claims 2-4

would be rejoined. Since claims 2-4 would depend from an allowed generic independent claim in such an instance, they would also be allowed.

**A. Schnitzhofer discloses the claimed firm features and firm mating features.**

In regard to the combination of Schnitzhofer and Balmain, Applicant contends that the references do not teach that the contacts between the firm features and the firm mating features are all tangent about one mutual center point, and that Schnitzhofer teaches away from this element. However, Schnitzhofer defines a plurality of firm features 12 that contact firm mating features such that the contacts between them are all tangent about one mutual center point.

Applicant asserts that components 13a and 13b of Schnitzhofer must also be considered as firm features and not only components 12. However, this is not required by the claims. Claim 1 only requires that a plurality of firm features and mating features all have the claimed contact arrangement. Components 12 of Schnitzhofer are indeed a plurality of firm features that contact firm mating features as required by the claims. On line 35 of page 7 through line 3 of page 8 of the remarks, Applicant acknowledges that components 12 are firm features with the claimed contact arrangement. The presence of additional firm contacts on the snowboard of Schnitzhofer is irrelevant, since the claims do not require the consideration of all firm features or exclude the presence of firm features that do not have the claimed contact arrangement. The showing of a plurality of firm features 12 with firm mating features that all have the claimed contact arrangement is sufficient to satisfy the claims.

Since Schnitzhofer explicitly teaches this claim requirement, he certainly does not teach away from it. Also, the alleged distinction between the torsional characteristics of Schnitzhofer and the present invention has not been captured by the claims. Consequently, Schnitzhofer's desire to only allow release of the binding plate in the longitudinal direction does not teach away from the claimed invention.

Furthermore, Applicant's reliance on the embodiment of Figures 1 and 2 of Schnitzhofer is not appropriate. The rejection of the claims is not based upon the embodiment of Figures 1 and 2, but the embodiment of Figures 3-8.

**B. The combination of Schnitzhofer and Balmain is proper.**

Applicant also asserts that the combination of Schnitzhofer and Balmain is not proper because there allegedly is no motivation to combine the references and the combination would allegedly destroy the purpose and function of the device of Schnitzhofer.

The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Balmain provides motivation for the combination. Figures 1 and 2 and column 4 of Balmain disclose the

advantageous nature of a single platform to which two bindings are fastened, which offers sufficient teaching to provide only one platform on the snowboard of Schnitzhofer.

In addition, providing only one platform would not destroy the purpose and function of the Schnitzhofer apparatus. The cited combination does not suggest bodily incorporating every aspect of the Balmain assembly, including specific ski bindings, into the snowboard of Schnitzhofer. Rather the combination merely suggests providing the apparatus of Schnitzhofer with one unified platform rather than two separate platforms. Such a modification would allow the use of a snowboard binding and foot position as envisioned by Schnitzhofer.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.




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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Christopher Bottorff

  
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5/20/04